IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

JUDGMENT
IN
1. S.B. CRIMINAL APPEAL NO.103/2005

Vinod Kumar S/o Shri Ganpat Lal
...Accused-Appellant
Versus
State of Rajasthan through P.P.
...Respondent

2. S.B. CRIMINAL APPEAL NO.82/2005

Heera Lal S/o Shri Ram Karan
...Accused-Appellant
Versus
The State of Rajasthan through its P.P.
...Respondent

Date of Judgment ::: 5th April, 2007

PRESENT
HON'BLE MR. JUSTICE NARENDRA KUMAR JAIN

Shri V.R. Bajwa, Counsel for accused-appellant in Criminal Appeal No.82/2005
Shri Prahlad Sharma, Counsel for accused-appellant in Criminal Appeal No.103/2005
Shri Arun Sharma, P.P., for the State

By the Court:-

These two appeals, on behalf of accused Vinod Kumar S/o Ganpat Lal and accused Heera Lal S/o Ram Karan, are directed against the common judgment dated 22.1.2005 passed by the Special Judge, SC/ST (Prevention of Atrocities) Cases, Jaipur, in Sessions Case No.123/2002, therefore, both the appeals are

taken-up for hearing together and being disposed of by this common order.

The trial court has convicted and sentenced the accused-appellants as under:-

Accused	***Under Section***	***Sentence of imprisonment***
Vinod Kumar	376, IPC	To undergo 7 years rigorous imprisonment and a fine of Rs.5,000/-; in default of payment of fine, to further undergo three months additional simple imprisonment
Heera Lal	376 read with 120-B, IPC	To undergo 7 years rigorous imprisonment and a fine of Rs.5,000/-; in default of payment of fine, to further undergo three months additional simple imprisonment

Exhibit P-2, First Information Report No.168/2002, was registered under Sections 376, 120-B, IPC, at Police Station Lal Kothi, Jaipur City, on the basis of 'parcha-bayan' (Exhibit P-1) of Kumari Guddi (PW-1). It was stated that on 28.8.2002 Guddi and her brother-in-law (gainer) Babulal had stayed in Room No.102 of a Hotel, and at that time two persons came there and out of them one person told that he is Station House Officer of Police Station and he would like to check the room. Another person asked her about their relationship. She stated their relations to be of brother-in-law and sister-in-law; then he asked as

to why they mentioned in the register of the Hotel themselves to be father and daughter. Thereafter they told that they will make an enquiry and they took Babulal; thereafter one person committed rape with her. The accused-persons were arrested and identification-parade took place. The prosecutrix was medically examined and after completion of investigation a challan was filed against both the accused-appellants.

The trial court framed charge against accused Vinod Kumar under Section 376, IPC, and Section 3(2)(5) of the SC/ST (Prevention of Atrocities) Act and against accused Heera Lal under Section 376 read with Section 120-B, IPC, and under Section 3 (2)(5) of the SC/ST (Prevention of Atrocities) Act.

The trial court, after considering all the evidence on the record, acquitted both the accused-persons from the charge under Section 3(2)(5) of the SC/ST (Prevention of Atrocities) Act, but convicted and sentenced both of them, as mentioned above.

Both the learned counsel appearing on behalf of accused Vinod Kumar and Heera Lal argued the case at length, but, during the course of arguments, they did not press their appeals on merits in view of the statement of prosecutrix PW-1 Guddi recorded by the

trial court and her 'parcha-bayan' (Exhibit P-1) and her statement recorded before the Magistrate under Section 164, Cr.P.C. (Exhibit P-7) dated 5.9.2002, and both the learned counsel contended that the sentence of imprisonment awarded by the trial court against the appellants be reduced to a period of imprisonment already undergone by them. It is contended that accused Vinod Kumar is in judicial custody since 29.8.2002, therefore, he has already remained in jail for about 4 years 7 months and 6 days, whereas another accused Heera Lal has already remained in custody for 11 months 25 days i.e. about one year.

The learned Public Prosecutor has opposed the prayer of both the learned counsel for the accused-appellants to reduce the sentence of imprisonment of the accused-appellants.

I have considered the submissions of learned counsel for both the parties and minutely scanned the impugned judgment as well as the record of the trial court.

Exhibit P-1, 'parcha-bayan' of Guddi (PW-1), was recorded on 29.8.2002 by the S.H.O., Police Station - Lal Kothi, wherein she stated about commission of rape with her only by one person. Subsequently, after arrest of accused-persons, both

the accused-appellants were identified in the identification-parade. Exhibit P-8 is the memo of identification-parade of accused Vinod Kumar and he was rightly identified by PW-1 Guddi and PW-2 Babulal. Exhibit P-9 is the memo of identification-parade of accused Heera Lal and he was rightly identified by PW-1 Guddi and PW-2 Babulal.

I have also considered the statement of the prosecutrix recorded under Section 164, Cr.P.C. (Exhibit P-7) and her statement recorded by the trial court, wherein she has specifically stated that accused Vinod Kumar, present in the Court, committed rape with her, but, so far as another accused Heera Lal is concerned, she stated that he did not commit rape with her. Although, there are number of contradictions in the statement of PW-1 Guddi and her statement is not corroborated fully with the medical-evidence also, but, so far as commission of offence of rape with her is concerned, I find that the same is fully proved from her statement and other prosecution evidence, and I am of the view that the learned trial court has considered the prosecution evidence in detail and has rightly convicted the accused-persons and both the learned counsel are right in not pressing their appeals on merits.

So far as the submission of the learned counsel for the appellants for reduction of sentence of imprisonment of the appellants is concerned, I find that, so far as accused Heera Lal is concerned, PW-1 Guddi has specifically stated that he did not commit any rape with her, but he was accompanied with accused Vinod Kumar. Although, there is no specific evidence in respect of offence under Section 120-B, IPC, but, in view of the fact that the order of conviction has not been challenged, therefore, I do not want to discuss the evidence, in detail, but I certainly find his case to be a fit one to reduce the sentence of imprisonment to a period of 11 months and 25 days, already undergone by him. So far as accused Vinod Kumar is concerned, I find his case to be a fit one to reduce the sentence of imprisonment looking to the whole statement of the prosecutrix.

Under sub-section (1) of Section 376 IPC the minimum sentence of seven years is prescribed but it is subject to proviso that the court may, for adequate and special reasons, impose a sentence of imprisonment for a term of less than seven years.

In Prem Chand Vs. State of Haryana, AIR 1989 SC 937, in the peculiar facts and circumstances of that case, the Hon'ble Supreme Court reduced the sentence

of imprisonment of ten years awarded under Section 376 (2) IPC, to a period of sentence of imprisonment of five years. The State of Haryana filed review petition before Hon'ble the Supreme Court in the above case and the same was dismissed. The decision of the Hon'ble Supreme Court in that review petition is reported in (1990) 1 SCC 249 (State of Haryana v. Prem Chand & Others).

In Ram Kumar Vs. State of Haryana – (2006) 4 SCC 347, their Lordships of the Hon'ble Apex Court reduced the sentence of seven years under Section 376, IPC, to a period of three years imprisonment. Para No.3 of the judgment reads as under:-

> "3. The appellant, aggrieved by the order passed by the High Court has filed the above appeal by way of appeal. We have been taken through the statement and evidence recorded by the Court. Our attention was also drawn to the judgment passed by both the Sessions Court as well as the judgment passed by the High Court. The learned counsel for the appellant drew our attention to the statement of the girl Bimla (PW-5) and also drew our attention to the evidence of the doctor. We have carefully analysed the evidence tendered by the prosecution. In our opinion, sufficient evidence was tendered by the prosecution to

> prove the guilt of the accused. However, at the time of hearing it is brought to our notice that the girl has now got married and living with her husband. The said statement is also ratified by the evidence of the father of the girl. Having regard to the peculiar facts and circumstances of the case, we are of the view that the sentence imposed by the Sessions Court and as affirmed by the High Court under Sections 366 and 376 of the Penal Code is on the highside. In our opinion, ends of justice would be amply met if we reduce the sentence to three years. We do so accordingly."

In the case of State of Chhattisgarh Vs. Lekhram (2006) 5 SCC 736 the Hon'ble Apex Court reduced the minimum sentence under Section 376, IPC, of seven years to a sentence of one-and-half-year imprisonment, already undergone by accused therein. Para 16 of the judgment reads as under:-

> "16. The prosecutrix was a mature girl. She was married. She spent a few months in her in-laws' place. The respondent was working in her house. They, thus, knew each other for a long time. The prosecution evidently could not prove its case that she was enticed away from the custody of her guardian by the respondent on a false plea

> that he would marry her. She denied the said suggestion as presumably she was aware that she being married, the question of her marrying the respondent again may not arise. She lived for some time with the respondent in a rented house. Both the courts proceeded on the basis that she was a consenting party. The occurrence took place in the year 1986. The respondent preferred an appeal before the High Court in the year 1987. The same remained pending for about 10 years. The special leave petition was filed by the State 230 days after the prescribed period of limitation for preferring such appeal. The delay in filing the special leave petition, however, was condoned. He is said to have remained in custody for about one-and-a-half years. In the peculiar facts and circumstances of this case and having regard to the facts that both the courts have arrived at the conclusion that she was a consenting party, in our opinion, it may not be proper to send the appellant back to prison."

In view of the facts and circumstances of the present case and keeping in view the aforesaid judgments of the Hon'ble Supreme Court, I am of the view that ends of justice will meet in case the imprisonment of 5 years is awarded to accused Vinod Kumar and that sentence of imprisonment of Heera Lal

is reduced to a period of 11 months and 25 days, already undergone by him.

Consequently, both the appeals are partly allowed. The conviction of accused Vinod Kumar under Section 376, IPC, and accused Heera Lal under Section 376 read with Section 120-B, IPC, is maintained; the sentence of imprisonment of accused Vinod Kumar is reduced to a period of 5 years and that of accused Heera Lal is reduced to a period of 11 months and 25 days, already undergone by him.

The accused Heera Lal is on bail and he needs not to surrender; his bail-bonds are discharged.

(Narendra Kumar Jain) J.

//Jaiman//